

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TIMOTHY HOWE, et al.,

Plaintiffs,

vs.

MOSSY VOLKSWAGEN OF
ESCONDIDO., et al.

Defendants.

CASE NO. 16cv988-LAB (RBB)

**ORDER GRANTING MOTION TO
STAY;**

**ORDER GRANTING MOTION FOR
LEAVE TO FILE REPLY; AND**

**ORDER DENYING WITHOUT
PREJUDICE MOTION FOR REMAND**

This action, which is one of many cases concerning the Volkswagen emissions controversy, was removed from state court. Defendants identified a federal question as the basis for this Court's exercise of jurisdiction. This case is being considered for transfer to the Northern District of California by the Panel on Multidistrict Litigation.¹

Plaintiff Timothy Howe moved to remand this case to state court. Defendants then moved to stay proceedings pending transfer by the MDL panel. After Plaintiffs filed their opposition to the motion to stay, Defendants moved for leave to file a reply brief.

The remand motion cites a case from the Central District of California, *Rambuski v. Volkswagen Group of America*, as giving rise to either collateral estoppel or res judicata.

¹ The MDL docket shows the panel has scheduled a hearing on July 28 concerning the transfer of this and other cases.

1 Plaintiffs argue that the effect of this decision is to require remand. In that case, the court
 2 determined that a substantial federal question was lacking, and issued an order of remand.
 3 The Court has reviewed the docket in that case, however, and it appears a motion for
 4 reconsideration of the remand order is pending. Because that decision is not yet final, there
 5 is no collateral estoppel or res judicata. *See Stein v. Braum Inv. & Development, Inc.*, 244
 6 Fed. Appx. 816, 817 (9th Cir. 2007) (in the absence of a final judgment, there can be no
 7 collateral estoppel or res judicata).

8 Ordinarily, the Court would rule on a motion to remand as soon as feasible. Here,
 9 however, the briefing shows Judge Breyer, the MDL transferee judge, has made
 10 arrangements to consider and adjudicate a number of remand motions together. Even if the
 11 Court were inclined to grant the motion, the interests of uniformity and judicial economy
 12 weigh against the Court deciding the issue, unless transfer is denied. In view of this, the
 13 motion for remand is **DENIED WITHOUT PREJUDICE**. This decision does not prevent
 14 Plaintiffs from renewing their motion either after transfer or if transfer is denied.

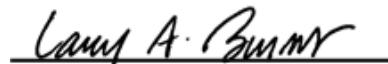
15 Defendants have requested leave to file a brief in reply to Plaintiffs' opposition to the
 16 *ex parte* motion to stay. (Docket no. 17.) That request is **GRANTED**, and the reply brief
 17 attached as an exhibit to the request is deemed filed. Defendants need not formally file it
 18 in the docket.

19 It appears this case is likely to be transferred, and the Court notes that in related
 20 cases a stay has been granted. The motion to stay pending MDL transfer is **GRANTED**.
 21 If transfer is denied, the stay will be lifted. Defendants need not reply to the complaint until
 22 after the transfer takes place or the stay is lifted. All pending hearings in this case are
 23 **VACATED**.

24

25 **IT IS SO ORDERED.**

26 DATED: July 26, 2016

27 

28 **HONORABLE LARRY ALAN BURNS**
 United States District Judge